IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1844 OF 2003

Akbar Imam Shaikh ... Petitioner

versus

The State of Maharashtra & ors. ... Respondents

...

Mr.R.D. Suryawanshi, for the Petitioner.

Mr.K.V. Saste, A.P.P., for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

1st March 2005

P.C.:

. Heard Counsel for the parties. Perused the relevant documents. The petition takes exception to the order passed by the Respondent No. 5 dated November 2003 in Externment Appeal, thereby confirming the order of externment passed by the Respondent No. 2 dated 26th August 2003 against the Petitioner.

2. Only three contentions have been raised before this Court. The first argument is that the order of externment requiring the Petitioner to remove himself from District Thane, Greater Mumbai, Mumbai Suburban and District Raigad for a period of two years is excessive. The argument is that the area of operation of the Petitioner was confined to Ambernath for which reason it was unnecessary to extern the Petitioner from area beyond Ambernath, or, at best, District Thane. This submission clearly overlooks the well-settled legal position as stated by the Apex Court in the case of Pandharinath v. State of Maharashtra, A.I.R. 1973 S.C. 630. The principle stated in the said case squarely applies to the fact situation of the present case. Inasmuch, there is proximity between Ambernath and Mumbai in view of the modern communication facilities and day to day travel by the persons staying in those areas for the purpose of work or otherwise. Viewed in that perspective, the argument regarding excessiveness of the externment order cannot be sustained. In the present case, the show cause notice refers to all the places from where ultimate order has been

passed and also record the reasons why such a course is necessary. Accordingly, this submission does not commend to me.

3. The second argument canvassed before this Court is that the show cause notice refers to five CRs., which criminal cases were still pending. It was argued that it was not open to the authorities to proceed against the Petitioner in respect of the pending criminal cases. In other words, it was argued that merely because some criminal cases are pending against the Petitioner, that by itself cannot be the basis for proceeding to extern the person from his place of residence. This submission clearly overlooks the purport of Section 56 of the Bombay Police Act. Section 56 enables the authority to initiate action when there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, etc. In other words, pending criminal cases, which come within the specified Chapters

referred to in section 56 can be the basis to proceed against the person. It is unnecessary that the person should be eventually convicted in those cases. There is nothing in the Act so as to accept such submission. Accordingly, even the second submission does not commend to me.

4. The third argument canvassed before this Court is essentially on the basis of exposition of this Court in the case of Mr.Kishor Rajaram Durge v. The Deputy Commissioner of Police & ors., reported in 2003 ALL MR (Cri) 2023. The argument is that the show cause notice refers to two in camera statements, but while giving the details of those statements, it is mentioned that the incidents referred to therein took place some time prior to one month or 15 days from the date referred to therein. The argument is that no specific date has been mentioned for which reason the principle stated by this Court in the case of Kishor (supra) ought to apply. This submission does not commend to me. The argument clearly overlooks that in the show cause notice, the place, time and other particulars are provided with details. Insofar as the date is concerned,

although it is mentioned that the incidents referred to in the in camera statements have occurred some time prior to one month or 15 days before the specified date, that does not mean that no date has been specified at all. On the other hand, generally, the date has been mentioned in the show cause notice. That, in my view, is a substantial compliance. Viewed in this perspective, the ratio of the decision in the case of Kishor (supra) will have no application to the fact situation of the present case. This is so, because in that case, no details as to date, time and place of the incidents narrated by the witnesses was mentioned. That is not the situation in the present case. Even the third contention cannot be countenanced.

5. Accordingly, as there is no substance in this petition, the same is dismissed. Interim relief passed by this Court is vacated.

(A.M.KHANWILKAR,J.)